

## **REMARKS**

At the outset, Applicant wishes to thank the Examiner for the courtesies extended to Applicant's representative during the interview conducted on January 10, 2008. A summary of the subject matter discussed during the interview is included in the following remarks.

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

### **Summary of Office Action**

In the August 29, 2006 Office Action, claims 8-14 were objected to for a minor informality.

Claims 1-7 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 6,410,822 to Mizutani (the Mizutani'822 patent).

Claims 8-14 were rejected under 35 U.S.C. §103(a) as obvious over the Mizutani'822 patent in view of U.S. Patent Application No. 2002/0156450 to Drevik (the Drevik'450 application).

### **Summary of Response to Office Action**

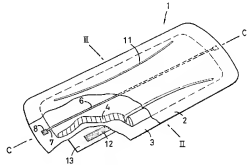
By this Amendment, Claims 1 and 8 are amended and new claims 15-19 are added. The claims currently pending in this application are Claims 1-19. Claims 1, 4 and 8 are the only independent claims.

Claim 8 is amended to change "absorbent" to "absorptive" in order to correct a typographical error. This change has no effect on the scope of the claim. Withdrawal of the objection to the claims is requested.

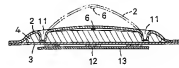
### **The Claims Define Allowable Subject Matter**

In the Office Action, beginning at page 3, claims 1-7 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,410,822 to Mizutani (the Mizutani'822 patent). This rejection is respectfully traversed for the following reasons.

Mizutani'822 discloses a sanitary napkin 1. As shown in Figs. 1 and 2 of Mizutani'822 (reproduced at right), the sanitary napkin 1 includes a single elastic member 6 extending entirely between opposite ends 7 of the napkin 1. As specifically indicated at column 2 lines 19-24 of Mizutani'822, the "single elastic member 6 extends under tension along a center line C-C...and [is] bonded at longitudinally opposite ends 7 of the elastic member 6 to an inner surface of at least one of the topsheet 2 and the backsheet 3 by means of adhesive agent 8."



Figs. 1 and 2 of Mizutani'822



Thus, Mizutani'822 patent clearly fails to disclose or teach at least several features of Applicant's claims. For example, the feature of "a resilient body which is fixed at least to the absorbent" as recited in claims 1 and 4 is not disclosed or taught by Mizutani'822. In addition, with regard to claim 4, Mizutani'822 also fails to disclose "slits extending through the entire thickness of the absorbent." Furthermore, Mizutani'822 also fails to disclose the feature of "a deformed portion...located in both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion of the absorbent and the resilient body as viewed in the longitudinal direction," as recited in claim 1.

As discussed during the interview, the Mizutani'822 patent is silent with respect to how or where the absorbent core 4 is attached or situated with respect to the remainder of the napkin 1. It appears, however, from the drawings of Mizutani '822 that the topsheet 2 and elastic member 6 can move with respect to the absorbent core 4 (see especially Fig. 2). In addition, the elastic member 6 of Mizutani'822 cannot reasonably be considered to include a deformed portion being a substantially V-shaped portion of...the resilient body as viewed in the longitudinal direction, as recited in claim 1.

As is well known, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053

(Fed. Cir. 1987)).

In this case, at least the above referenced feature of “a resilient body which is fixed at least to the absorbent” as recited in claims 1 and 4 is completely absent from Mizutani’822. In addition, with regard to independent claim 4, Mizutani’822 also fails to disclose “slits extending through the entire thickness of the absorbent.” The feature of a deformed portion being “a substantially V-shaped portion of...the resilient body as viewed in the longitudinal direction,” as recited in claim 1, is also totally absent from Mizutani’822. Therefore, the rejection of claims 1 and 4 under 35 U.S.C. §102(b) is flawed.

Claims 2, 3, and 5-7 are dependent from claim 1 and therefore include all the features of claim 1 therein. Accordingly, it is respectfully submitted that claims 2, 3, and 5-7 are also allowable over the Mizutani’822 patent for at least the same reasons that claim 1 is allowable, and for the separate features that these claims recite.

For at least the above reasons, it is respectfully submitted that the rejection of claims 1-7 under 35 U.S.C. §102(b) is in error. Withdrawal of the rejection is respectfully requested.

Claims 8-14 were rejected under 35 U.S.C. 103(a) as allegedly obvious over Mizutani’822 in view of U.S. Patent Application No. 2002/0156450 to Drevik (the Drevik’450 application). This rejection is respectfully traversed at least for the following reasons.

At the outset, we note that the Drevik’450 application fails to make up for the above-noted deficiencies of Mizutani’822. Specifically, the Drevik’450 application also fails to disclose or teach at least the feature of “a resilient body which is fixed at least to the absorbent” as recited in claim 8. In addition, the feature of “a deformed portion...located in both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion of...the resilient body as viewed in the longitudinal direction,” as recited in claim 8, is also totally absent from the Drevik’450 application.

By contrast, the Drevik’450 application indicates at paragraph [0082] that “the elastic means is arranged on the inside or on the outside of the liquidtight outer layer and is connected to the latter and/or other layers forming part of the product.” Thus, there is no specific disclosure of a resilient body which is fixed at least to the absorbent, as recited in claim 8. Nor is there any

disclosure or teaching of a deformed portion located in both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion of the resilient body as viewed in the longitudinal direction, as recited in claim 8

In addition, there is no motivation to combine the two references. At page 2 section 2 of the Office Action, with regard to the obviousness rejection of claim 8, the Examiner argues that the present application does not show any "stated purpose" for the "offset" as recited in claim 8 and that the claimed "offset" does not solve any particular problem. The present application is very clear regarding the stated purpose of the "offset" and the problem which it is intended to fix. Specifically, at least paragraphs [0005] and [0008] of Applicant's specification clearly disclose a stated purpose when it indicates that the conventional art "cannot sufficiently follow or come into contact with a profile of a lower half of a user's body" and that the invention provides "an absorptive product...which can form and hold a proper stereoscopic shape so as to be properly fitted on a complicated three-dimensional shape of the body of a user for preventing leaking of an evacuated body fluid or the like to the outside," respectively.

The suggested modification of Mizutani'822 with the teaching in the Drevik'450 application would also destroy the intended purpose of the sanitary napkin 1 disclosed in Mizutani'822. Specifically, offsetting the single elastic member 6 of Mizutani'822 requires totally reconfiguring the entire napkin 1, and especially the perimeter portion of the napkin 1 where the elastic member 6 is attached via adhesive agent 8. It is unclear from a reading of the Drevik'450 application how such a total reconfiguration of Mizutani'822 is possible or desirable. Simply offsetting the elastic member 6 and attaching it to the absorbent core as suggested in the Office Action would likely result in the core being pulled and bunched up at one end, resulting in an inoperable napkin.

The Office bears the initial burden of establishing a *prima facie* case of obviousness. M.P.E.P. § 2142. If the Office fails to set forth a *prima facie* case of obviousness, Applicant is under "no obligation to submit evidence of nonobviousness," such as unexpected results or commercial success. *Id.* In other words, if the Office fails to meet the initial burden of establishing a *prima facie* case of obviousness as to a given claim, then that claim is not obvious

without any specific evidence of nonobviousness by Applicant.

In order to establish a *prima facie* case of obviousness, the Office must satisfy three requirements. M.P.E.P. § 2142. First, "the prior art reference, or references when combined, must teach or suggest *all* the claim limitations." *Id.* (emphasis added). Second, the Office must show that there is "some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." *Id.* Finally, "there must be a reasonable expectation of success." *Id.*

In this case, as set forth in detail above, there is no reasonable expectation of success because the base reference to Mizutani'822 would be destroyed by the suggested combination with the Drevik'450 application's teaching. In addition, there is no *prime facie* case of obviousness because at least the claim 8 feature of "a resilient body which is fixed at least to the absorbent" and the claim 8 feature of "a deformed portion located in both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion of...the resilient body as viewed in the longitudinal direction" are absent from both of the cited references, either alone or in combination. In addition, there would have been no motivation to combine the references as suggested because it would have been unreasonable to shape the Mizutani'822 device in the manner disclosed by the Drevik'450 application without destroying the intended purpose of the Mizutani'822 device.

For at least the above reasons, it is respectfully submitted that the combination of the Mizutani'822 patent with the Drevik'450 application is not appropriate, and that the rejection of claim 8 under 35 U.S.C. § 103 is in error.

Claims 9-14 are dependent from claim 8 and therefore include all the features of claim 8 therein. Accordingly, it is respectfully submitted that claims 9-14 are also allowable over the combination of the Mizutani'822 patent and the Drevik'450 application for at least the same reasons that claim 8 is allowable, and for the separate features that these claims recite.

Accordingly, for at least the above reasons, withdrawal of the rejection of claims 8-14 under 35 U.S.C. § 103 is respectfully requested.

Claims 15-19 are added to provide an alternate scope of protection for the invention.  
Claims 15-19 depend from claim 1, which is allowable at least for the above-noted reasons.

### **Conclusion**

Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.


If the Patent Examiner believes that a further telephone conference with the undersigned would expedite passage of this patent application to issue, she is invited to call on the number below.

### **Constructive Petition**

- [X] Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including filing fees, fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, and any required extension of time fees, or credit any overpayment to Applicant's representative's Deposit Account cited in the application transmittal originally filed with this application. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

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Date: January 14, 2008